



13 AUG 2002

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In re Application of
ZAMIR et al.
Serial No.: 10/070,923
PCT No.: PCT/IL01/00008
Int. Filing Date: 02 January 2001
Priority Date: 04 January 2000
Attorney's Docket No.: 02/23531
For: POLYNUCLEOTIDE ENCODING
POLYPEPTIDES HAVING INVERTASE ACTIVITY
AND USE OF SAME

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: DECISION ON PETITION
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: UNDER 37 CFR 1.137(b)
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This is a decision on applicant's "Petition under 37 CFR 1.137(b)" filed in the United States Patent and Trademark Office (USPTO) on 13 March 2002.

BACKGROUND

On 02 January 2001, applicant filed international application No. PCT/IL01/00008, which claimed a priority date of 04 January 2000. No Demand was filed. Thus, the deadline for entry into the national stage was 20 month from the priority date or to 04 September 2001. International application PCT/IL01/00008 became abandoned as to the United States of America after midnight on 04 September 2001 for failure to pay the basic national fee.

On 13 March 2002, applicant filed a Transmittal Letter requesting entry into the national stage. Applicant also filed the instant petition to revive PCT/IB01/00008 under 37 CFR 1.137(b).

DISCUSSION

As explained at Section 1893.03(a) of the Manual of Patent Examining Procedure (MPEP), any intended filing of an international application as a national stage application must clearly and unambiguously be identified as such and must satisfy all of the conditions set forth in 35 U.S.C. 371(c). The official PTO Notice published in the Official Gazette at 1077 OG 13 entitled "Minimum Requirements for Acceptance of Applications Under 35 U.S.C. 371 (the National Stage of PCT)" states, in part, the following:

The Patent and Trademark Office is continuing to receive application papers which do not

clearly identify whether the papers (1) are being submitted to enter the national stage of the Patent Cooperation Treaty (PCT) under 35 U.S.C. 371 or (2) are being filed as a regular national application under 35 U.S.C. 111.

* * *

If there are any conflicting instructions as to which sections of the statute (371 or 111) is intended the application will be accepted under 35 U.S.C. 111.

On 13 March 2002, applicant filed a Transmittal Letter to the United States Designated/Elected Office Concerning A Filing under 35 U.S.C. 371 (Form PTO-1390). The first sentence of the accompanying specification stated "This application is a Continuation-In-Part of PCT/IL01/00008, filed January 02, 2001...". Applicant provided the basic national fee for entry into the national stage in the USPTO. Therefore, due to the conflicting instructions, the papers filed on 13 March 2002 are considered a U.S. application under 35 U.S.C. 111(a).

Applicant's petition to revive under 37 CFR 1.137(b) filed 13 March 2002 in the above-captioned application is hereby **GRANTED** as follows:

Applicants' statement that the "the failure to file the PCT Demand and the U.S. National Stage filing therefore was unintentional" has been interpreted as meaning that "entire delay in filing the required reply from the due date for the reply until the filing of this petition under 37 CFR 1.137(b) was unintentional" as required by 37 CFR 1.137(b)(3) at the time of filing this petition. If this is an incorrect interpretation in view of the rules, petitioner is required to promptly notify this office.

A review of the application file reveals that the required petition fee of \$640 has been paid. Thus, the requirements of 37 CFR 1.137(b) have been satisfied. Therefore, the request to revive the application abandoned under 35 U.S.C. 371(d) is granted as to the National stage in the United States of America.

Applicant is entitled to claim benefit under 35 U.S.C. 120 and 365(c) of the filing date of the international application for the common subject matter, since this application (Serial No. 10/070,923) and the international application (PCT/IL01/00008) designating the United States were copending on 13 March 2002. In order to obtain benefit of the earlier international application, applicant amended the beginning of the specification of this application by inserting a proper reference to the parent international application with the statement: "This application is a Continuation-In-Part of PCT/IL01/00008, filed January 2, 2001."

Applicant is reminded that in order to perfect the claim for priority under 35 U.S.C. 119, applicant must submit a certified copy of the priority document. The certified copy of the priority document submitted to the International Bureau cannot be relied upon to perfect the claim for priority. See MPEP §1896.

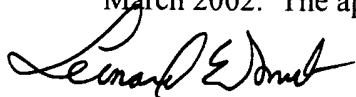
International application PCT/IL01/00008 is being revived for purposes of continuity only and since continuity has been established by this decision reviving the international application, the international application is again abandoned in favor of the present continuing application number 10/070,923.

CONCLUSION

For the reasons above, applicants' submission on 13 March 2002 will be treated as an application filed under 35 U.S.C. 111(a), with a filing date of 13 March 2002. Applicant's petition to revive PCT/IL01/00008, originally filed with the DO/EO/US on 13 March 2002 is

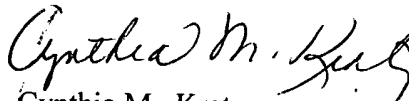
GRANTED.

This application is being forwarded to Office of Initial Preliminary Examination (OIPE) for further processing as an application filed under 35 U.S.C. 111(a), having a filing date of 13 March 2002. The application will then be forwarded to Art Unit 1638.



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